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Supreme Court of the United States

OCTOBER TERM 1943

No. 754

RUFUS MESHBERGER and LELIA B. MESHBERGER,
Petitioners,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MOTION

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To the Honorable Chief Justice and Associate Justice of the Supreme Court of the United States:

Counsel for the petitioners respectfully move the court to state the reasons why their petition for certiorari was denied, and in support thereof present the following reasons:

1. After the record, petition and supporting brief of the petitioners, the so-called "Reply" brief of the respondent, and the reply brief of the petitioners had been submitted to the court, the only information coming to the petitioners or their counsel as to the result of said submission was a telegram from the clerk stating that certiorari was denied on May 1, 1944. If any reason was stated by the court, counsel for the petitioners do not know what it was.

2. It is a common complaint of the bar of this court that counsel for the parties involved in a petition for certiorari which is denied is usually unable to discover why it was denied. So far as the contacts and observations of counsel for these petitioners go such complaint is universal among the bar but seldom, if ever, expressed to the court.

3. It is conceivable that in any given case a petition for certiorari may be denied, not because of the substance of the case presented, but merely because it has not been properly presented, or merely because the time is not ripe for presentation. If the reason were known, the defect could often be remedied.

4. In *Gypsy* v. *Escoe*, 1927, 275 U. S. 498, this Court in denying certiorari plainly informed the parties what was wrong procedurally and how to right it. But in the vast majority of instances no statement except "certiorari denied" is announced.

5. Where certiorari is denied because of the substantive law, it would seem that the parties and their counsel immediately concerned should know what point has been the basis of the denial of a review in this court, and it would

seem that the public interest would require that the public generally have the same information.

6. Until counsel for a petitioner for certiorari knows why certiorari is denied, it is impossible to know what the denial of certiorari means—whether the court deems the matter was not properly or timely presented, or whether it is deemed that the judgment complained of is right. Yet the bar has frequently been cautioned that denial of certiorari is not to be taken as approval or affirmation of the judgment below.

7. In nearly all cases the denial of certiorari means that the petitioner's rights which are involved are lost forever—unless as in *Kalb* v. *Feuerstein*, 1941, 313 U. S. 599, his counsel takes the risk of attempting to divine the reasoning of the court and after a total of eight years of litigation finally he attains the object of his original recourse to the federal courts.

8. In some instances it turns out that if the petitioner whose petition for certiorari was denied had kept his case in court, he would finally have succeeded, because later the precise question presented by his denied petition was subsequently decided in his favor. *In re Richmond*, 1938, 303 U. S. 657. *Wright* v. *Union Central*, 1938, 304 U. S. 502. *Wright* v. *Logan*, 1942, 315 U. S. 139. *John Hancock* v. *Bartels*, 1939, 308 U. S. 180.

9. In farmer debtor cases, the loss of his case, more often than in most litigation and practically always, means that the petitioner is destined to become a landless farmer. Usually the farm involved is all he has, except his family, his experience, and his implements, a circumstance which leads him inevitably into the class of tenants, and increases the prevalence of absentee farm ownership.

10. These reasons involve enormous social consequences which Chapters 8, 9, 10, 11, 12, 13, 14, and 15 of the Bankruptcy Act were designed to prevent. When such consequences, which come about almost imperceptibly, have fully developed into a set social change, there is no remedy which recourse to the courts can administer.

It is for all these reasons, and many others which a more extensive consideration of the subject would disclose, that this court is requested to state the reason, or reasons, why the petition for certiorari in this instance was denied.

Respectfully submitted,

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May 16, 1944.